

THE PARTIES

3. Plaintiff Universal Windows Direct, Inc. (“UWD” or “Plaintiff”) is a corporation incorporated and operating under the laws of the State of Ohio.

4. The corporate headquarters for UWD are located at 7813 First Place, Oakwood Village, Ohio 44146.

5. UWD also maintains a 20,000 square foot, state-of-the-art showroom located at Willow Parkway, Cuyahoga Heights, Ohio 44125 showcasing its window, siding, door, patio structure, and other home improvement products.

6. UWD is in the business of marketing, selling, and installing replacement windows, roofing, vinyl siding, entry doors, patio doors, gutter protection systems, patio structures, and attic insulation in the State of Ohio and throughout the United States.

7. Upon information and belief, Defendant Factory Windows Direct, LLC (“FWD” or “Defendant”) is a limited liability company organized and operating under the laws of the State of Ohio.

8. Upon information and belief, the corporate headquarters of FWD are located at 600 Superior Avenue East, Suite 1300, Cleveland City Center, Cleveland, Ohio 44114.

9. Upon information and belief, FWD also maintains a United States Post Office Box address of P.O. BOX 39542, Solon, Ohio 44139.

10. Upon information and belief, FWD is also in the business of marketing, selling, and installing vinyl replacement windows, vinyl siding, roofing, entry doors, sliding patio doors, and other exterior home improvement products in the State of Ohio.

11. UWD and FWD are direct competitors in the replacement window and exterior home improvement market in the State of Ohio.

JURISDICTION AND VENUE

12. This is an action for infringement of a federally registered mark under 15 U.S.C. § 1114(1) (Section 32 of the Lanham Act); trademark infringement, false designation of origin and unfair competition under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act); trademark infringement under Ohio common law; trademark dilution under Ohio common law; unfair competition under Ohio common law; deceptive trade practices under Ohio statutory law under O.R.C. § 4165.02 *et seq.*; and unjust enrichment under Ohio common law.

13. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332 and 1338.

14. This Court has supplemental jurisdiction over the Ohio statutory claims and Ohio common law claims under 28 U.S.C. §§ 1338(b) and 1367(a).

15. Personal jurisdiction in this Court is proper over FWD as FWD maintains its corporate headquarters in the Northern District of Ohio and actively sells its replacement windows and other home improvement products and services in direct competition with UWD in this judicial district.

16. Venue is proper in this Court under 28 U.S.C. §1391, among other things, because: (a) FWD is subject to personal jurisdiction in this judicial district, and is therefore deemed to reside in this district; and (b) substantial parts of events giving rise to this action arose in this judicial district.

FACTS COMMON TO ALL COUNTS

The Origin and Success of Universal Windows Direct

17. UWD was founded in Northeast Ohio by two life-long friends from Fairview Park, Ohio, William Barr and Michael Strmac.

18. UWD was incorporated in the State of Ohio on June 16, 2003, as shown in its original Articles of Incorporation. (A true and accurate copy of UWD's Articles of Incorporation is attached hereto as Exhibit 1.)

19. UWD markets, sells, and installs replacement windows, vinyl siding, entry doors, patio doors, roofing, patio structures, gutter protection systems, and attic insulation to residential homeowners throughout the State of Ohio, and particularly throughout northern Ohio.

20. UWD has expanded its replacement window and exterior home improvement business throughout the State of Ohio through its authorized dealership program. UWD has the following authorized dealerships in the State of Ohio:

- a. Universal Windows Direct of Akron/Canton
- b. Universal Windows Direct of Athens, Ohio
- c. Universal Windows Direct of Columbus
- d. Universal Windows Direct of Cincinnati
- e. Universal Windows Direct of Dayton
- f. Universal Windows Direct of Youngstown

21. UWD has also successfully expanded its business throughout the United States of America and Canada through its authorized dealer program in the following states and provinces:

- a. Alabama (Universal Windows Direct of Huntsville)
- b. Colorado (Universal Windows Direct of Denver)

- c. Florida (Universal Windows Direct of Jacksonville)
- d. Georgia (Universal Windows Direct of Atlanta)
- e. Iowa (Universal Windows Direct of Des Moines; Universal Windows Direct of Sioux Falls)
- f. Illinois (Universal Windows Direct of Chicago)
- g. Louisiana (Universal Windows Direct of Acadiana)
- h. Michigan (Universal Windows Direct of Grand Rapids)
- i. Minnesota (Universal Windows Direct of the Twin Cities)
- j. Missouri (Universal Windows Direct of Kansas City)
- k. Nebraska (Universal Windows Direct of Omaha)
- l. Nevada (Universal Windows Direct of Las Vegas)
- m. New Jersey (Universal Windows Direct of New Jersey)
- n. New York (Universal Windows Direct of Buffalo; Universal Windows Direct of Rochester)
- o. Pennsylvania (Universal Windows Direct of Philadelphia; Universal Windows Direct of Pittsburgh; Universal Windows Direct of Southwest Pennsylvania)
- p. Virginia (Universal Windows Direct of Richmond)
- q. Washington, DC (Universal Windows Direct of DC Metro)
- r. West Virginia (Universal Windows Direct of Charleston)
- s. Wisconsin (Universal Windows Direct of Green Bay; Universal Windows Direct of Milwaukee)
- t. Tennessee (Universal Windows Direct of Chattanooga)

u. Texas (Universal Windows Direct of Dallas/Fort Worth)

v. Canada (Universal Windows Direct of Calgary)

22. UWD began using the standard character mark UNIVERSAL WINDOWS DIRECT in the State of Ohio as a trade name and service mark in June of 2003 to identify UWD as the source or origin of its replacement window goods and services. Since June of 2003, UWD has used the word mark UNIVERSAL WINDOWS DIRECT continuously and extensively in the State of Ohio, and most particularly in northern Ohio, in connection with its replacement window installation services and exterior home improvement business. The use of the phrase UNIVERSAL WINDOWS DIRECT as a trade name and service mark has not been interrupted since the date of first use in 2003 by UWD.

23. UWD also owns United States Registration No. 3,348,489 for its UNIVERSAL WINDOWS DIRECT and design mark for use in connection with “non-metal windows” in International Class 019, and “installation of windows, roofing, siding and doors” in International Class 037. (A true and accurate copy of the Certificate of Registration for United States Registration No. 3,348,489 is attached hereto as Exhibit 2.)

24. United States Registration No. 3,348,489 has attained incontestable status with the United States Patent and Trademark Office (“USPTO”).

25. Universal also owns United States Registration No. 4,524,232 for a further UNIVERSAL WINDOWS DIRECT and design mark for use in connection with “metal doors, gutter protection systems, namely, metal debris guards for gutters” in International Class 006, and “non-metal windows, doors and siding, and gutter protection systems, namely, non-metal debris guards for gutters” and “installation of windows, siding, doors, gutter protection and attic

insulation” in International Class 037. (A true and accurate copy of the Certificate of Registration for United States Registration No. 4,524,232 is attached hereto as Exhibit 3.)

26. UWD also uses the abbreviation “UWD” as a service mark in connection with its business.

27. UWD is recognized as one of the fastest-growing and largest privately held replacement window and home improvement companies in the State of Ohio and in the United States of America.

28. UWD advertises, markets and otherwise promotes its replacement window and home improvement services under its UNIVERSAL WINDOWS DIRECT standard character mark and its federally registered UNIVERSAL WINDOWS DIRECT and design marks in newspapers, magazines, billboards, signage at public events such as athletic events, conventions, fairs, festivals, trade shows, mall kiosks, radio, television, well-known social media sites such as Facebook and Twitter, mobile applications, YouTube, and the following internet websites:

- a. www.universalwindowsdirect.com
- b. www.universalwindowscmetro.com
- c. www.universalwindowsacadiana.com
- d. www.universalwindowsakron.com
- e. www.universalwindowsathens.com
- f. www.universalwindowsatlanta.com
- g. www.universalwindowsbuffalo.com
- h. www.universalwindowscalgary.com
- i. www.universalwindowscharleston.com
- j. www.universalwindowscharlotte.com

- k. www.universalwindowsschattanooga.com
- l. www.universalwindowschi.com
- m. www.uwdcincinnati.com
- n. www.universalwindowscolumbus.com
- o. www.universalwindowsdallasfortworth.com
- p. www.universalwindowsdayton.com
- q. www.universalwindowsdenver.com
- r. www.universalwindowsdesmoines.com
- s. www.uwdgrandrapids.com
- t. www.universalwindowsgreenbay.com
- u. www.universalwindowshuntsville.com
- v. www.universalwindowsjacksonville.com
- w. www.universalwindowskansascity.com
- x. www.universalwindowslasvegas.com
- y. www.universalwindowsmadison.com
- z. www.universalwindowsmilwaukee.com
- aa. www.universalwindowsnj.com
- bb. www.universalwindowssomaha.com
- cc. www.universalwindowssphiladelphia.com
- dd. www.universalwindowsrochester.com
- ee. www.universalwindowssiouxfalls.com
- ff. www.universalwindowspittsburgh.com

gg. www.universalwindowsmn.com

hh. www.universalwindowsyoungstown.com

29. UWD has sold and installed over 8,300 total jobs for replacement windows and home improvement projects in the State of Ohio since 2003.

30. UWD has expended over \$12 Million in advertising, marketing, and promoting its replacement window and home improvement services under the mark UNIVERSAL WINDOWS DIRECT in the State of Ohio since 2003.

31. Because of the high quality of its replacement windows and installation services in the home improvement field, UWD is endorsed and promoted by local celebrities and radio personalities such as Shane “Rover” French (WMMS Rover’s Morning Glory Show), Bruce Hooley (ESPN 850 WKNR), Aaron Goldhammer (ESPN 850 WKNR), Jimmy Malone (Majic 105.7), Bill Wills (WTAM 1100), Dustin Fox (92.3 The Fan), Joe Cronauer (95.5 The Fish), and Sara Carnes (95.5 The Fish).

32. UWD has received significant local, regional, and national publicity and has been the subject of numerous awards and articles in regional and national publications in connection with its business.

33. For example, UWD was the 2010 recipient of the Regional Ernst & Young Entrepreneur of the Year Award. (A true and accurate copy of the Press Release is attached hereto as Exhibit 4.)

34. UWD’s fast growth and entrepreneurial spirit was also recognized by being listed on Case Western Reserve University’s 2011 Weatherhead 100 list.¹

¹ See <http://www.sbsonline.com/article/weatherhead-100-list/>.

**The Origin of Factory Windows Direct and Its Misappropriation
and Infringement of Universal Windows Direct's Intellectual Property**

35. FWD was initially incorporated as USAHOMESAVE.COM, LLC in the State of Ohio on September 23, 2011.

36. According to its articles of organization, the stated purpose of USAHOMESAVE.COM, LLC is “manufacture, sales and service of vinyl replacement windows and other home improvement products.” (A true and accurate copy of USAHOMESAVE.COM, LLC’s Articles of Incorporation is attached hereto as Exhibit 5.)

37. USAHOMESAVE.COM, LLC amended its articles of organization by changing its name to Factory Windows Direct, LLC on November 17, 2014. (A true and accurate copy of FWD’s Amended Articles of Incorporation is attached hereto as Exhibit 6.)

38. FWD acquired the internet domain name www.factorywindowsdirect.net only recently on October 31, 2014. (See Exhibit 7 hereto.)²

39. According FWD’s internet website, FWD markets and sells vinyl replacement windows, vinyl siding, and entry doors, patio doors, and roofing under the designation FACTORY WINDOWS DIRECT. (See Exhibit 8 hereto.)

40. Upon information and belief, FWD had actual knowledge of, among other things, the existence of UWD, the vinyl replacement windows products and installation services offered by UWD in the replacement window and home improvement market, and UWD’s use of the mark UNIVERSAL WINDOWS DIRECT at the time it amended its name to FACTORY WINDOWS DIRECT.

² Exhibit 7 consists of two pages. The first is a printout of the complete GoDaddy web page showing that FWD acquired its internet domain name on October 31, 2014. The second page of Exhibit 7 contains a section of the same GoDaddy web page that has been enlarged so that the October 31, 2014 acquisition date can be easily seen.

41. FWD also uses the abbreviation “FWD” in connection with its replacement window and home improvement business.

42. FWD also posted an alleged customer testimonial to further trade on the goodwill and business reputation of UWD business in connection with UWD’s marks I LOVE MY WINDOWS and YOU’LL BE SAYING . . . I LOVE MY WINDOWS. After receiving a cease and desist letter from UWD, FWD changed its customer testimonial. (A true and accurate copy of the Cease and Desist Letter is attached hereto as Exhibit 9.)

43. Until very recently, FWD also used the slogan “LIFE IS HARD. BUYING WINDOWS SHOULDN’T BE” in connection with the designation FACTORY WINDOWS DIRECT on its internet website, further attempting to capitalize on the good will and reputation of another long-time and widely-successful local company, Spitzer Auto World, which has used the slogan “LIFE IS HARD. CAR BUYING SHOULDN’T BE” for years. FWD’s conduct establishes an ongoing pattern of blatant disrespect for the intellectual property rights of others for the sole purpose of trading on the goodwill of well-known and successful local companies. (See Exhibit 10 hereto.)

44. Upon information and belief, FWD has also recently approached many of the very same Cleveland-area radio stations that UWD engages to advertise and promote its replacement window business under the mark UNIVERSAL WINDOWS DIRECT.

COUNT 1
(Common Law Trademark Infringement under Ohio Law)

45. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

46. UWD has continually and extensively used its UNIVERSAL WINDOWS DIRECT standard character mark and its federally registered UNIVERSAL WINDOWS

DIRECT and design marks from their respective dates of first use in connection with the advertising, marketing, and promotion of sales of its vinyl replacement window, siding, roofing, gutter protection systems, doors, patio structures, and attic insulation in the State of Ohio, and particularly in northern Ohio.

47. Over the past twelve (12) years, UWD has spent significant time, effort, and millions of dollars advertising, marketing, and promoting its replacement windows and installation services under its UNIVERSAL WINDOWS DIRECT standard character mark and UNIVERSAL WINDOWS DIRECT and design marks in newspapers, magazines, billboards, signage at public events such as athletic events (Cleveland Browns NFL professional football team – First Energy Stadium, Cleveland Indians MLB professional baseball team – Progressive Field, Cleveland Cavaliers NBA professional basketball team – Quicken Loans Arena) conventions, fairs, and festivals, trade shows, radio (ESPN 850AM WKNR; 100.7FM WMMS; 95.5FM The Fish), television, well-known social media sites Facebook and Twitter, mobile applications, the internet (YouTube), its corporate website (www.universalwindowsdirect.com), and the many websites of its authorized dealers in the State of Ohio, and particularly in northern Ohio.

48. Because of UWD's significant investment in advertising and marketing its services under its UNIVERSAL WINDOWS DIRECT standard character mark and UNIVERSAL WINDOWS DIRECT and design marks, UNIVERSAL WINDOWS DIRECT has truly become a "household" name in the home improvement market in the State of Ohio. It is virtually impossible to listen to regional radio or watch regional television stations for an extended period of time without hearing or viewing an advertisement featuring UWD's

UNIVERSAL WINDOWS DIRECT standard character mark and/or UNIVERSAL WINDOWS DIRECT and design marks.

49. Because of UWD's extensive branding, advertising, marketing, and promotion efforts, UWD has enjoyed significant sales success and growth in connection with its replacement window and home improvement services offered under the UNIVERSAL WINDOWS DIRECT standard character mark and the UNIVERSAL WINDOWS DIRECT and design marks in the State of Ohio.

50. UWD's UNIVERSAL WINDOWS DIRECT standard character mark and UNIVERSAL WINDOWS DIRECT and design marks are inherently distinctive.

51. UWD's UNIVERSAL WINDOWS DIRECT standard character mark has also acquired secondary meaning in at least the State of Ohio based on, among other things: (a) UWD's continuous and ubiquitous use of the phrase UNIVERSAL WINDOWS DIRECT as a trade name since at least as early as 2003; (b) the extensive and pervasive use of the phrase UNIVERSAL WINDOWS DIRECT as a service mark throughout the State of Ohio, and especially the use throughout northern Ohio since at least as early as 2003; (c) the amount of money and manner of advertising of the mark UNIVERSAL WINDOWS DIRECT; (d) the amount of sales under the mark UNIVERSAL WINDOWS DIRECT; (e) the number of replacement window and home improvement jobs sold by UWD services under the standard character mark UNIVERSAL WINDOWS DIRECT; (f) UWD's established place as the largest replacement windows and home exterior improvement company in northeast Ohio; and (g) FWD's intentional copying of UWD's UNIVERSAL WINDOWS DIRECT mark.

52. UWD's UNIVERSAL WINDOWS DIRECT standard character mark and UNIVERSAL WINDOWS DIRECT and design marks are strong marks based on the continual, extensive, and exclusive use throughout the State of Ohio.

53. The marks UNIVERSAL WINDOWS DIRECT and FACTORY WINDOWS DIRECT are virtually identical when viewed in their entireties. Both marks comprise three words, with the second word ("WINDOWS") and the third word ("DIRECT") of each mark being identical. Both marks also share a very similar cadence when pronounced. The result being that the overall appearance, sound, connotation, and commercial impression of both marks as perceived by the relevant purchasing public is confusingly similar.

54. UWD uses its UNIVERSAL WINDOWS DIRECT standard character mark and UNIVERSAL WINDOWS DIRECT and design marks in connection with providing installation of replacement windows, entry and patio doors, roofing, vinyl siding, roofing, gutter protection, patio structures, and attic insulation.

55. FWD has intentionally adopted the designation FACTORY WINDOWS DIRECT for use in connection with its installation services of replacement windows, entry and patio doors, roofing, and vinyl siding. The services offered by UWD under its UNIVERSAL WINDOWS DIRECT marks and the services offered by FWD under the designation FACTORY WINDOWS DIRECT are identical.

56. UWD advertises, markets and promotes its goods and services in the State of Ohio through its corporate internet website www.universalwindowsdirect.com.

57. Like UWD, FWD also advertises, markets and promotes its identical replacement window installation services through its internet website www.factorywindowsdirect.net.

58. Both UWD and FWD advertise and market their replacement windows and home improvement services by posting videos on the www.youtube.com website (“YouTube”). Thus, both UWD and FWD offer their identical services under the marks UNIVERSAL WINDOWS DIRECT and FACTORY WINDOWS DIRECT through identical marketing channels.

59. The primary target customers of both UWD and FWD are residential homeowners in the State of Ohio that are seeking replacement windows for to repair or update their homes and therefore the customers of UWD and FWD are identical.

60. UWD began offering vinyl replacement windows, siding and doors under the mark UNIVERSAL WINDOWS DIRECT beginning in 2003. Since that time, UWD has expanded its services to include installation of patio structures, gutter protection services, roofing, and attic insulation.

61. FWD currently offers replacement window, door, siding, and roofing installation services and it is likely that FWD will attempt to expand its business to cover the additional services currently offered by UWD under its UNIVERSAL WINDOWS DIRECT marks.

62. Upon information and belief, FWD was well aware of UWD and its UNIVERSAL WINDOWS DIRECT marks before it intentionally adopted the designation FACTORY WINDOWS DIRECT in an attempt to trade on the goodwill and reputation of UWD in the replacement window and home improvement market.

63. Rather than coming up with original names for its business, FWD has exhibited a blatant pattern of copying or “tweaking” famous marks of well-known and successful local companies for the sole purpose of capitalizing on the goodwill and reputation of the true service mark owners.

64. For example, in addition to copying UWD's UNIVERSAL WINDOWS DIRECT mark, until very recently, FWD used the slogan "LIFE IS HARD. BUYING WINDOWS SHOULDN'T BE." This slogan is a copy of the slogan "LIFE IS HARD. CAR BUYING SHOULDN'T BE" of the long-time Cleveland area automobile dealership Spitzer Auto World. (See Exhibit 10 hereto.)

65. The copying of both the UWD and Spitzer marks establishes FWD's pattern of disrespect for the intellectual property rights of successful local companies and confirms FWD's intent to copy UWD's mark.

66. FWD's use of the mark FACTORY WINDOWS DIRECT is without the consent of UWD.

67. FWD is using the mark FACTORY WINDOWS DIRECT in a manner which is causing or is highly likely to cause confusion, deception, and mistake among ordinary purchasers as to the source or origin of the goods and services of FWD.

68. FWD is using the mark FACTORY WINDOWS DIRECT in a manner which conveys to ordinary purchasers in the vinyl replacement windows and home improvement market that the goods and services of FWD are approved or sponsored by UWD.

69. FWD is using the mark FACTORY WINDOWS DIRECT in a manner which conveys to ordinary purchasers in the vinyl replacement windows and home improvement market that there is an affiliation between FWD and UWD.

70. FWD's use of the mark FACTORY WINDOWS DIRECT constitutes infringement of UWD's trade name and service mark UNIVERSAL WINDOWS DIRECT and UWD marks under the common law of the State of Ohio.

COUNT 2
(Common Law Unfair Competition under Ohio Common Law)

71. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

72. FWD's use of the designations FACTORY WINDOWS DIRECT and FWD in connection with replacement window installation and home improvement services in the State of Ohio as described above constitutes passing-off/palming-off and unfair competition under Ohio common law.

COUNT 3
(Common Law Trademark Dilution under Ohio Law)

73. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

74. UWD has continuously and extensively used the UNIVERSAL WINDOWS DIRECT standard character mark, and the federally registered UNIVERSAL WINDOWS DIRECT and design marks, as a trade name and as a service mark to identify UWD as the source or origin of its replacement windows and other home improvement services in the State of Ohio since 2003.

75. UWD's UNIVERSAL WINDOWS DIRECT marks commenced use in the replacement window and home improvement market in the State of Ohio many years before FWD was even organized or began using the designation FACTORY WINDOWS DIRECT in the identical replacement window and home improvement market. Accordingly, UWD's UNIVERSAL WINDOWS DIRECT marks are senior to the first use of the designation FACTORY WINDOWS DIRECT.

76. UWD's UNIVERSAL WINDOWS DIRECT marks are distinctive marks.

77. UWD's UNIVERSAL WINDOWS DIRECT marks are famous marks within the State of Ohio, and particularly in northern Ohio, in the replacement window and home improvement market.

78. UWD's UNIVERSAL WINDOWS DIRECT marks were famous marks within the State of Ohio, and particularly in northern Ohio, in the replacement window and home improvement market long before FWD commenced use of the designation FACTORY WINDOWS DIRECT.

79. The use of the designation of FACTORY WINDOWS DIRECT by FWD in the State of Ohio in the replacement window and home improvement market dilutes UWD's UNIVERSAL WINDOWS DIRECT marks by blurring and tarnishing the image of UWD's distinctive UNIVERSAL WINDOWS DIRECT marks.

80. By using the designation FACTORY WINDOWS DIRECT in connection with offering and selling replacement window and home improvement installation services in the State of Ohio, FWD has used the designation FACTORY WINDOWS DIRECT in a commercial use in commerce in direct competition with UWD.

81. The use of the designation of FACTORY WINDOWS DIRECT by FWD in the State of Ohio in the replacement window and home improvement market will result in the gradual diminution of the distinctiveness, effectiveness, and value of UWD's UNIVERSAL WINDOWS DIRECT marks.

82. FWD's use of the mark FACTORY WINDOWS DIRECT constitutes dilution of UWD's UNIVERSAL WINDOWS DIRECT marks under Ohio common law.

COUNT 4

(Violation of Ohio Deceptive Trade Practices Act – O.R.C. § 4165.02)

83. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

84. FWD's use of the designation FACTORY WINDOWS DIRECT in the replacement window and home improvement markets in the State of Ohio constitutes passing off its goods and services as those of UWD offered under UWD's UNIVERSAL WINDOWS DIRECT marks and constitutes a deceptive trade practice under O.R.C. § 4165.02(A)(1).

85. FWD's use of the designation FACTORY WINDOWS DIRECT in the replacement window and home improvement markets in the State of Ohio is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of its goods and services, and constitutes a deceptive trade practice under O.R.C. § 4165.02(A)(2).

86. FWD's use of the designation FACTORY WINDOWS DIRECT in the replacement window and home improvement markets in the State of Ohio is likely to cause confusion or misunderstanding as to affiliation, connection, or association with UWD and constitutes a deceptive trade practice under O.R.C. § 4165.02(A)(3).

87. FWD will continue its deceptive trade practices unless restrained by this Court.

COUNT 5

**(Infringement of an Unregistered Mark under the Lanham Act)
(Section 43(a), 15 U.S.C. § 1125(a))**

88. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

89. UWD has continuously and extensively used its UNIVERSAL WINDOWS DIRECT standard character mark and UWD mark from their dates of first use in its

advertisement, marketing, promotion, and sales of its replacement window and home improvement services in interstate commerce in the United States.

90. UWD's UNIVERSAL WINDOWS DIRECT standard character mark is inherently distinctive.

91. UWD's UNIVERSAL WINDOWS DIRECT standard character mark has acquired secondary meaning based on twelve (12) years of continuous and extensive use in the vinyl replacement window and home improvement market in interstate commerce.

92. As a result of its continuous and extensive use of the mark, UWD's UNIVERSAL WINDOWS DIRECT mark functions to identify UWD as the source or origin of the goods and services in connection with which UWD's UNIVERSAL WINDOWS DIRECT standard character mark is used.

93. FWD began using the mark FACTORY WINDOWS DIRECT at least a decade after UWD's date of first use of its UNIVERSAL WINDOWS DIRECT standard character mark.

94. FWD's actions constitute infringement of UWD's unregistered standard character mark UNIVERSAL WINDOWS DIRECT in violation of 15 U.S.C. § 1125(a).

COUNT 6
(False Designation of Origin and Unfair Competition)
(Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))

95. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

96. FWD is using FACTORY WINDOWS DIRECT in interstate commerce in a manner which is causing or is highly likely to cause confusion or mistake, or to deceive ordinary purchasers as to FWD's affiliation, connection, or association with UWD in violation of 15 U.S.C. § 1125(a)(1)(A).

97. FWD is using FACTORY WINDOWS DIRECT in interstate commerce in a manner which is causing or is highly likely to cause confusion or mistake, or to deceive ordinary purchasers as to the origin, sponsorship, or approval of FWD's goods and services in violation of 15 U.S.C. § 1125(a)(1)(A).

COUNT 7

(Infringement of Federally Registered Trademark – 15 U.S.C. § 1114(1))

98. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

99. UWD owns United States Registration No. 3,348,489 for its UNIVERSAL WINDOWS DIRECT and design mark for use in connection with “non-metal windows” in International Class 019 and “installation of windows, roofing, siding and doors” in International Class 037.

100. UWD owns United States Registration No. 4,524,232 for another UNIVERSAL WINDOWS DIRECT and design mark for use in connection with “metal doors, gutter protection systems, namely, metal debris guards for gutters” in International Class 006, “non-metal windows, doors and siding, and gutter protection systems, namely, non-metal debris guards for gutters” and “installation of windows, siding, doors, gutter protection and attic insulation” in International Class 037.

101. UWD has continually and extensively used its registered marks from their respective dates of first use and first use in interstate commerce in its advertisement and promotion of sales of its replacement window and home improvement services in the United States of America.

102. UWD has experienced significant sales success and expansion over the past 12 years in connection with the goods and services it offers under its registered marks in interstate commerce.

103. FWD is using the mark FACTORY WINDOWS DIRECT in connection with the advertising, marketing, and sale of their identical replacement window and home improvement services in interstate commerce to the identical customers and through identical trade channels in interstate commerce.

104. FWD's use of FACTORY WINDOWS DIRECT is without the consent of UWD.

105. The overall appearance, sound, and commercial impression of FACTORY WINDOWS DIRECT are confusingly similar to that of UWD's federally registered marks.

106. FACTORY WINDOWS DIRECT is a colorable imitation of UWD's federally registered marks.

107. Upon information and belief, FWD's use of FACTORY WINDOWS DIRECT is intentional and is with knowledge of UWD's rights in and to its federally registered marks.

108. FWD has been and is currently using FACTORY WINDOWS DIRECT in a manner which is causing or is highly likely to cause confusion among ordinary purchasers as to the source or origin of FWD's goods and services.

109. FWD's use of FACTORY WINDOWS DIRECT is in violation of 15 U.S.C. § 1114(1).

COUNT 8
(Unjust Enrichment)

110. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

111. FWD's use of FACTORY WINDOWS DIRECT as described above, upon information and belief, has resulted in FWD selling its replacement window installation and home improvement services at the expense of UWD.

112. By virtue of FWD's use of FACTORY WINDOWS DIRECT, as described above, FWD has been unjustly enriched at the expense of UWD.

COUNT 9
(Injunctive Relief)

113. UWD incorporates each and every allegation of this Complaint, whether above or below, as if fully rewritten.

114. UWD has a strong likelihood of success on the merits of this action.

115. UWD will otherwise suffer irreparable injury if the activities of FWD are not preliminarily and permanently enjoined by this Court.

116. The issuance of a preliminary and permanent injunction would not cause any harm to others.

117. The public interest would clearly be served by issuance of a preliminary injunction and permanent injunction enjoining FWD from using designations that are likely to confuse or deceive the relevant purchasing public as to the source or origin of FWD's goods and services, or as to an affiliation between UWD and FWD, or as to sponsorship of FWD's goods and services by UWD.

PRAYER FOR RELIEF

WHEREFORE, UWD seeks the following relief from this Court:

- A. A finding that FWD has infringed UWD's trade name UNIVERSAL WINDOWS DIRECT under Ohio common law;
- B. A finding that FWD has infringed UWD's standard character mark UNIVERSAL WINDOWS DIRECT under Ohio common law;
- C. A finding that FWD has infringed UWD's UNIVERSAL WINDOWS DIRECT and design marks under Ohio common law;
- D. A finding that FWD has committed unfair competition under Ohio common law;
- E. A finding that FWD has diluted UWD's standard character mark UNIVERSAL WINDOWS DIRECT word mark under Ohio common law;
- F. A finding that FWD has diluted UWD's UNIVERSAL WINDOWS DIRECT and design marks under Ohio common law;
- G. A finding that FWD has violated the Ohio Deceptive Trade Practices Act, O.R.C. § 4165.02(A)(1);
- H. A finding that FWD has violated the Ohio Deceptive Trade Practices Act, O.R.C. § 4165.02(A)(2);
- I. A finding that FWD has violated the Ohio Deceptive Trade Practices Act, O.R.C. § 4165.02(A)(3);
- J. A finding that FWD has infringed UWD's unregistered standard character mark UNIVERSAL WINDOWS DIRECT under the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a);
- K. A finding that FWD committed unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

L. A finding that FWD been unjustly enriched at the expense of UWD under Ohio common law;

M. Injunctive relief permanently enjoining FWD from using UWD's common law and federally registered marks in connection with FWD's business, including but not limited to, the advertisement, marketing, promotion, and sale of FWD's goods and/or performance of services by FWD;

N. Injunctive relief permanently enjoining FWD from using UWD's common law and federally registered marks as a trade name in connection with its business;

O. An Order directing FWD to immediately file an amendment to its articles of organization with the Ohio Secretary of State changing its name to a designation that is not confusingly similar to UNIVERSAL WINDOWS DIRECT;

P. An Order transferring FWD's domain www.factorywindowsdirect.net to UWD;

Q. An Order directing FWD to deliver to UWD all materials containing the designations FACTORY WINDOWS DIRECT and/or FWD for destruction;

R. An accounting of all FWD's profits;

S. A finding that the actions of FWD were willful and/or in bad faith;

T. A finding that this is an exceptional case under 15 U.S.C. § 1117(a) (Section 35(a) of the Lanham Act) and an award of reasonable attorney's fees;

U. Actual damages;

V. Trebling of damages;

W. Reasonable attorney's fees and the costs of this action; and

X. Such further relief as to which this Court may find UWD entitled under the law or in equity.

Respectfully submitted,

/s/ Evan T. Byron

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VERIFICATION

On behalf of Plaintiff Universal Windows Direct, Inc., the undersigned state, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the facts and allegations contained herein are true and correct to the best of their knowledge and belief, except so far as the allegations are herein stated to be upon information and belief, and that, for said allegations, the undersigned state, under penalty of perjury pursuant to 28 U.S.C. § 1746, that they believe said allegations to be true and correct.

/s/ Michael Strmac

Michael Strmac

Owner

Universal Windows Direct, Inc.

/s/ William Barr

William Barr

Owner

Universal Windows Direct, Inc.

Executed this 20th day of August, 2015.

JURY DEMAND

Plaintiff hereby requests a jury trial for all claims as provided for in Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Evan T. Byron

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